IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.1121 of 2004.

Date of Decision: May 3,2007.

H.P.T.D.C. …Petitioner.

-versus-

Shiv Kumar and another. …Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?

For the Petitioner. : Mrs. Ranjana Parma, Advocate.
For Respondent No.1. : Mr. C.N. Singh, Advocate.

Rajiv Sharma, J. (oral):

The workman aggrieved by his retrenchment in violation of Section 25 of the Industrial Disputes Act, 1947 (hereinafter referred to as '**the Act'**) approached the Labour Officer concerned. After the failure report, a reference was made by the Government to the Labour Court to the following effect:-

> **"Whether the termination of services of Shri Shiv Kumar, ex-daily wages worker by (1) Managing Director, Himachal Pradesh Tourism Development Corporation, The Ridge, Shimla-1 and (2) Sr. Manager, Himachal Pradesh Tourism Development Corporation (Transport Wing Manali, Distt. Kullu, H.P.) w.e.f. 1.11.1998 without any notice, chargesheet, enquiry and without compliance of Section 25(F) of the Industrial Disputes Act, 1947, on completion of more than 240 days' continuous service, is legal and justified. If not to what relief of service benefits and amount of compensation, Sh. Shiv Kumar is entitled?**

Whether reporters of Local Papers may be allowed to see the Judgment?

The workman filed a claim petition before the Labour Court stating therein that he had completed 240 days preceding date of his retrenchment and conditions of service were altered to his disadvantage in violation of Section 9(A) of the Act. The Labour Court has passed the award on 14.7.2004.

Before the Labour Court, admitted facts were that the respondent-workman was engaged as Washer Boy (Cleaner) by the petitioner-Corporation with effect from April, 1997 and he worked in that capacity up to October 1998 as per man-days chart. According to the man-days chart, the workman had worked for 258 days in the year 1997 and 303 days from January to October 1998. It was also admitted case before the Labour Court of the parties that no notice or retrenchment compensation was given to the workman before dispensing with his service w.e.f. 1.11.1998. Accordingly, the Labour Court had come to a definite conclusion that the petitioner had completed 240 days continuous service preceding his date of retrenchment, i.e. 1.11.1998 and no notice, as stipulated under Section 25-F of the Industrial Disputes Act, 1947 was issued to him.

Mrs. Ranjana Parmar has assailed the award only on the ground that the appointment of workman was seasonal thus, the provisions of Section 25–F of the Act were not attracted.

Mr. Chandernarayan Singh for the workman has supported the award.

I have perused the Award carefully and as per the admitted facts, the workman was engaged w.e.f. April 17, 1997 and he worked in the capacity of Washer Boy upto October 31, 1998. The Labour Court had come to definite conclusion that on the basis of man-days chart, the petitioner had worked for 258 days in the year 1997 and for 303 days from January,1998 to October, 1998. The petitioner-corporation has not placed any material before the Labour Court to substantiate its plea that the appointment of the workman was seasonal to the contrary the findings returned by the Labour Court are that the workman had completed 240 days in the year 1997-1998.

There is no illegality or jurisdictional error in the award dated 14.7.2004 and the same is upheld. Consequently the writ petition is dismissed.

The interim order dated 23.12.2004 is vacated. The petitioner-Corporation is directed to implement the award dated 14.7.2004 within a period of three weeks from today and the workman is also held entitled to the back wages to the extent of 25% as granted by the Labour Court.

(Rajiv Sharma)
Judge.

May 3, 2007.
(Gandhi)